COMPENSATION REVIEW BOARD

CRB No. 13-005

JACQUELINE WHITE,
Claimant–Petitioner,

v.

CHILDREN'S NATIONAL MEDICAL CENTER AND AVIZENT,
Employer/Carrier – Respondent.

Appeal from a December 13, 2012 Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 12-395, OWC No. 688398

Krista N. DeSmyter, Esquire, for the Claimant/Petitioner
David M. Schoenfeld, Esquire, for the Employer-Carrier/Respondent

Before: HENRY W. MCCOY, HEATHER C. LESLIE, and MELISSA LIN JONES, *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for Employer as a Coordinator of Clinical Laboratory Support Services where the most physical aspect of her job was walking around as she supervised the work of the lab technicians. On February 14, 2011 while seated at her desk, Claimant turned hitting her right knee on one of the steel cabinets under her desk. Claimant filed an incident report and sought medical treatment the next day at Employee Health. A February 16, 2011 x-ray was negative for fracture and Claimant was advised to use over-the-counter anti-inflammatories.

On February 23, 2011, Claimant sought follow-up treatment at Metro Orthopedics & Sports Therapy where she was seen by Barry Thompson, a physician's assistant, with complaints

of pain over the prepatellar area. After an examination, Mr. Thompson diagnosed right knee contusion, posttraumatic right prepatellar bursitis, and preexisting degenerative joint disease of the knee. He prescribed a medicated gel and a short course of physical therapy which commenced on March 2, 2011 and concluded on March 23, 2011.

Claimant next treated with Dr. Craig Thomas, an orthopedic surgeon, on July 20, 2011, also with complaints of right knee pain. Dr. Thomas diagnosed osteoarthritis of the right knee secondary to work related trauma.

Claimant returned to Metro Orthopedics & Sports Therapy on August 22, 2011 where she was seen by orthopedic surgeon Dr. Phillip Omohundro. Dr. Omohundro ordered an MRI of the right knee which revealed evidence of a tear in the medial and lateral menisci and some degenerative changes. Based on these results, Dr. Omohundro recommended and later performed outpatient arthroscopic surgery consisting of partial medical and lateral meniscectomies, abrasion chondrolplasty, and synovectomy of the right knee on October 21, 2011.

At a post-operative follow-up on November 14, 2011, Dr. Omohundro diagnosed chondromalacia patellae and administered a right knee injection. On November 18, 2011, he released Claimant to modified duty with a restriction on lifting no more than 20 pounds.

On February 14, 2012, Claimant underwent an independent medical examination (IME) performed by Dr. Marc Danziger at Employer's request. Dr. Danziger opined that all treatment received by Claimant after February 23, 2011 was not causally related to the work injury but more related to arthritic changes secondary to age and obesity. A May 15, 2012 Utilization Review report determined that any treatment 17 days after the work injury was no longer reasonable and necessary to treat the work injury.

Following a September 5, 2012 report from Dr. Omohundro relating her current need for treatment to the work injury, Claimant filed a claim seeking authorization for ongoing medical treatment, payment of causally related medical expenses, and reimbursement of medical travel expenses. On December 13, 2012, an Administrative Law Judge (ALJ) determined that Claimant's current right knee conditions and symptoms were not medically causally related to the February 14, 2011 work injury. Claimant timely appealed with Employer filing in opposition.

On appeal, Claimant asserts the ALJ erred in holding that her current knee conditions are not causally related to the work injury, that the ALJ erred in expressing his own medical opinion as to her condition, and erred in rejecting the opinion of the treating physician. In opposition, Employer argues that the ALJ's rulings in the Compensation Order (CO) are supported by substantial evidence and should be affirmed.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law.[1] *See* D.C. Workers'

[1] "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005), (the "Act") at § 32-1521.01(d)(2)(A). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

At the formal hearing in this matter, the initial question to be resolved was whether Claimant's current right knee conditions were medically causally related to the February 14, 2011 work incident. As to this medical causal relationship, Claimant is entitled to a rebuttable presumption that such a relationship exists and therefore compensable under the Act.[2] Once the presumption has been invoked, the burden shifts to Employer to produce evidence specific and comprehensive to sever that connection. It has become generally accepted that Employer can rebut the presumption of medical causation by presenting a medical report from a qualified medical expert, who having examined the employee and the employee's medical reports, renders an unambiguous opinion that the work injury did not contribute to the disability.[3]

While there is no dispute that Claimant properly invoked the presumption, Claimant argues on appeal that the ALJ erred in holding that her right knee conditions were not medically causally related to her work injury. It is Claimant's contention that the IME report by Dr. Danziger submitted in rebuttal by Employer gave no opinion on whether or not her preexisting arthritis was aggravated by the work injury and the report offered no medical explanation as to how her right knee conditions became unrelated to her work injury after February 23, 2011. In opposition, Employer argued that Dr. Danziger did provide explanations for his medical conclusions and therefore the ALJ was correct in finding the presumption was rebutted. We agree.

In assessing the IME report of Dr. Danziger submitted by Employer to rebut the presumption, the ALJ stated:

> "Under assessment, Dr. Danziger reported Claimant sustained a contusion to the right knee, and her initial treatment failed to show clinical evidence of joint line tenderness or meniscus pathology. He indicated Claimant appeared to progress nicely following physical therapy, and there was a five month gap in her medical treatment. Dr. Danziger remarked it is difficult to conclude this later treatment is in any way related to the original injury. Dr. Danziger described Claimant as morbidly obese, and stated meniscus tearing in her age population was somewhat ubiquitous. With the exception of the initial treatment at occupational health and the February 23, 2011 visit with Dr. Omohundro, Dr. Danziger did not find any of Claimant's subsequent treatment causally related to the work incident. Dr. Danziger explained a knee contusion without a twist would not be expected to result in a meniscus tear. He opined pain five months after the accident is more than likely to be secondary to her obesity and age rather than related to the contusion and prepatellar bursal issue that was present initially. EE 1,

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[2] *Whittaker v. DOES*, 531 A.2d 844 (D.C. 1995).

[3] *Washington Post v. DOES*, 852 A.2d 909, 910 (D.C. 2004).

> p. 2. Dr. Danziger related Claimant's medical treatment after March 2011 to arthritic changes secondary to her age and obesity. Dr. Danziger concurred with Dr. Omohundro's recent request for Synvisc injections to treat Claimant's arthritic knee condition, but stated the treatment had nothing to do with the work related injury. EE 1, p. 3.[4]

Based on Dr. Danziger's overall assessment that Claimant's treatment after February 23, 2011 was not causally related to the work injury but rather due to arthritic changes secondary to her age and obesity, the ALJ determined that the presumption had been rebutted. Claimant argues that as Dr. Danziger did not address whether the work injury aggravated her arthritis and gave no opinion regarding the diagnosis of prepatellar buritis or patellofemoral chondrosis his opinion did not rebut the presumption. However, there was no need for Dr. Danziger to do so as he provided an unambiguous opinion that there was no "causal relationship between the patient's work related injury and the subsequent need for surgical treatment and the current symptomatology." This was specific and comprehensive enough to sever the presumption and therefore no error is found.

Claimant next argues that the ALJ erred "by substituting his own medical judgment for that of Dr. Danziger."[5] Specifically, Claimant references the statement by the ALJ that

> While Dr. Danziger does not expressly state Claimant did not suffer an aggravation, his terminology implies the work incident is not indirectly responsible for Claimant's right knee meniscus pathology, the chondrosis or the underlying degenerative condition.[6]

This statement by the ALJ is contained in that portion of the CO where he weighs the medical evidence without the benefit to Claimant of the statutory presumption as it has been rebutted. We do not view the ALJ's statement as rendering any type of medical opinion, but rather as an analysis or synthesis of Dr. Danziger's various statements that no meniscus pathology was found at Claimant's initial examination with Dr. Omohundro and that subsequent pain five months later was more likely secondary to Claimant's obesity and age rather than related to the "contusion and prepatellar bursal issue that was present initially." As the ALJ has interpreted the medical evidence as permitted, no error is found.

Finally, Claimant argues the ALJ erred by rejecting the opinion of the treating physician, specifically stating that the CO did not apply the treating physician preference. We fail to understand the basis for this argument as the ALJ clearly states at the bottom of page 7 of the CO:

> It has generally become accepted under the District of Columbia's Workers' Compensation Act that there is a preference for the testimony of treating physicians over doctors retained for litigation purposes, *Canlas v. DOES*, 723 A.2d 1210 (D.C. 1999), and that in assessing the weight of competing medical testimony in worker [sic] compensation cases, attending physicians are ordinarily preferred as witnesses to those doctors

[4] CO at 7.

[5] Claimant's *Memorandum of Points and Authorities in Support of Application for Review*, p. 9.

[6] CO at 9.

> who have been retained to examine the claimant solely for purposes of litigation. *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). However, it is equally recognized that "the hearing examiner nonetheless 'may choose to credit the testimony of a non-treating physician over a treating physician,' *Short v. DOES*, 7223 A.2d 845 (D.C. 1998), particularly is that so if the contradicting medical evidence from the employer was from a doctor who examined the claimant, and the hearing examiner explains his decision to credit the one opinion over the other. *Canlas, supra*, at 1212.

In this statement, the ALJ has summarized the current state of the law in this jurisdiction that the medical evidence from a claimant's treating physician is entitled to a preference to that of an IME physician and that should he give greater credence to the opinions of the IME physician, he must give his reasons for doing so. Thus, the ALJ acknowledged the treating physician preference and once applied, recognized his obligation to provide reasons if he chose to rely upon the IME physician in reaching a decision.

In assessing the medical reports of Claimant's treating physicians, Drs. Omohundro and Thomas, the ALJ determined that neither doctor provided "sufficient medical rationale to explain how the work incident caused or aggravated her right knee conditions." CO at 8. As to Dr. Thomas, the ALJ noted his "medical history contains an inaccurate mechanism of the injury" in that he reported that the injury was incurred when Claimant was rising from a seated position. Accordingly, the ALJ reasoned

> Dr. Thomas merely offers a general conclusion of osteoarthritis of the right knee secondary to work related trauma. Given Dr. Thomas' inaccurate description of the work incident, the record does not demonstrate Dr. Thomas had a sufficient medical basis for his opinion. Similarly, Dr. Thomas does not offer any findings related to patellofemoral chondrosis and medial and lateral meniscal tears. CO at 8.

As to Dr. Omohundro, the ALJ discounts his opinion because it was six months after the work incident that he expressed concern regarding Claimant's meniscus pathology and only addressed the issue of medical causation on September 5, 2012 following an inquiry from Claimant's attorney. After considering the doctor's statements on medical causation, the ALJ reasoned

> Dr. Omohundro does not offer any insight or explain how the work incident caused Claimant's chondrosis, meniscus tears, DJD and arthritis to become active following the work incident. He certainly does not give the impression he has some findings related to these conditions prior to the work incident which enable him to find the work incident altered the underlying conditions. *Id.*

The ALJ found the medical opinion of Dr. Danziger more persuasive insofar as

> Dr. Danziger related Claimant's medical treatment after March 2011 to arthritic changes secondary to her age and obesity. Dr. Danziger understood the mechanism of the injury, reviewed the pertinent medical reports and diagnostic studies, and provided detailed findings after examination of Claimant. Dr. Danziger offered sufficient medical rationale

> to support his findings and conclusion that Claimant's treatment after February 23, 2011 was not in any way related to the original injury. Dr. Danziger's opinion constitutes the weight of medical authority, and establishes Claimant's current right knee complaints and treatment are not medically related to the work incident of February 14, 2011. CO at 9.

As required, the ALJ afforded Claimant's medical evidence the treating physician preference and upon finding it deficient in addressing the issue of medical causation gave specific reasons for rejecting those opinions in favor of the IME physician. Those reasons are supported by substantial evidence in the record and to disturb them would constitute a re-weighing of the evidence that we are not permitted to do.[7]

CONCLUSION AND ORDER

The December 13, 2012 Compensation Order is supported by substantial evidence in the record and is in accordance with the law. Accordingly, it is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY
Administrative Appeals Judge

April 9, 2013
DATE

[7] See *Marriott, supra*.